



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 102 OF 2012

MOHAMMED UME ADO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused MOHAMMED UME ADO is facing trial for the murder of Yasmin Ali Godo. It is alleged that he committed the offence on 2nd December, 2012 at Mirangi Lodge, Eastleigh where they cohabited as husband and wife. The accused has now applied to be released on bail pending the conclusion of his ongoing trial. In the application dated 21st November, 2013 and which was argued on 17th November, 2014, the applicant states that he has a constitutional right to be released on bail on reasonable conditions; that he has an unqualified constitutional right to be presumed innocent until the contrary is proven; that he will avail himself to attend court; that he is a Kenyan citizen who at all material times has resided in Kenya and is not a flight risk; and, that he has a fixed abode in Eastleigh, Nairobi.

The application is opposed by the State through the replying affidavit of Cpl. Burure Marwa of CID Shauri Moyo Police Station who is the investigating officer in the case. He depones that the accused and the deceased were in a relationship that turned violent leading to the death of the deceased on 2nd December, 2012; that the evidence against the accused is irrefutable as he was seen breaking into the deceased's room; that the accused is well known to the prosecution witnesses and there is a likelihood of interfering with them if released on bond; and, that although the accused has a right to bail such right is not absolute and can be curtailed by the court.

At the hearing of the application I heard oral submissions from **Mr. Kaingu** for the applicant and **Ms. Gichohi** for the State. **Mr. Kaingu** underscored the constitutional basis of the application and that the accused was not a flight risk and will attend court for his trial. He relied on the averments in the supporting affidavit. **Ms. Gichohi** on her part urged the court to exercise discretion to deny the applicant bail as the case was already progressing well with only four witnesses remaining.

I have considered the application. It is not in doubt that the applicant is entitled to bail under Article 49 (i) (h) of the Constitution. The constitution, however, gives the court discretion to deny bail where there are compelling reasons. In so doing, the court must consider the circumstances of each individual case and exercise discretion judiciously. In the present case, the record shows that the trial commenced on 19th June 2014 and so far 5 prosecution witnesses have testified. At the hearing on 10th February 2015, prosecution counsel informed the court that there were only 4 prosecution witnesses outstanding. It is evident therefore that the matter has progressed well and can be concluded expeditiously. Indeed the matter is scheduled for further hearing on 17th & 18 of June, 2015.

Having carefully considered the application and the circumstances of this case, I am of the firm view that the interest of justice will be served by an expeditious conclusion of the case rather than granting the applicant bail.

In the premises, I am disinclined to grant the applicant bail. He shall remain in custody till the conclusion of his trial. I direct the prosecution to present all their witnesses in the next hearing dates.

Orders accordingly.

Ruling delivered and dated at Nairobi this 26th day of March, 2015

R. LAGAT - KORIR

JUDGE

In the presence of:

.....: Court clerk

.....: Accused/Applicant

.....: For State

.....: For Accused/Applicant